

FILED

SEP 8 1942

CHARLES ELMORE COOPLY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 380

IN THE MATTER OF GEORGE F. NORD BUILDING CORPORATION.

B. A. KAUSAL,

Petitioner,

vs.

79TH AND ESCANABA CORPORATION,

A CORPORATION,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT, AND BRIEF IN
SUPPORT THEREOF.**

CHARLES BUSHNELL FULLERTON,
Chicago, Illinois,
Counsel for Petitioner.

HAROLD V. SNYDER,
135 S. LaSalle Street,
Chicago, Illinois,
Of Counsel.



INDEX.

PETITION FOR WRIT OF CERTIORARI.

	PAGE
Summary Statement of the Matter Involved.....	2
Reasons Relied on for the Allowance of the Writ.....	4

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of Courts Below.....	7
Jurisdiction	8
Statement of the Case	8
Specification of Errors	9
Argument	10
Point A. In a corporate reorganization proceeding a decree of confirmation terminates the Court's jurisdiction to consider any matters de hors the plan of reorganization	11
Point B. A Court of Bankruptcy has no jurisdic- tion to enter a restraining order after the debt- or's property has been conveyed to a new cor- poration, so that it was no longer in custodia legis	12
Point C. The restraining order violated was a nul- lity in that it restricted the right of the freedom of speech and writing.....	13
Conclusion	14

TABLE OF CASES.

Beauchamp v. U. S., 76 Fed. (2d) 663 (CCA 9).....	13
Consolidated Gas Elec. L. & P. Co. v. United Rail- ways & Elec. Co., 85 Fed. (2d) 799, 801, 802, 803 (CCA 4, Cert. den. 57 Sup. Ct. 493).....	11
Forsyth v. Hammond, 166 U. S. 506.....	8
Federal Trade Commission v. Fairyfoot Products Co., 94 Fed. (2d) 844, 845 (CCA 7).....	13
In Re Camden Rail & Harbor Terminal Corporation, 35 Fed. Supp. 862-867 (DCNJ)	4
In re Prudence-Bonds Corp., 77 Fed. (2d) 328, 330 (CCA 2); Cert. denied 296 U. S. 584.....	4
In re Adolph Goebel, Inc., 80 Fed. (2d) 849, 852 (C. CA 2)	4, 12
In re Lake's Laundry, Inc., 79 Fed. (2d) 326 (CCA 2)	12
Magnam v. Coty, 262 U. S. 159, 162.....	8

TEXT BOOKS, ETC.

Article V of the U. S. Constitution.....	5
Art. II, Sec. 4 of the Illinois Constitution, Smith- Hurd Ill. Anno. Statutes, Vol. on Constitution, page 286	5, 13
16 Corpus Juris Secundum, 628.....	5, 13
83 A. L. R. 193.....	5, 13

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No.

IN THE MATTER OF GEORGE F. NORD BUILDING CORPORATION.

B. A. KAUSAL,

Petitioner,

VS.

79TH AND ESCANABA CORPORATION,

A CORPORATION,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT.**

*To the Honorable Harlan F. Stone, Chief Justice of the
United States and the Associate Justices of the
Supreme Court of the United States:*

Your petitioner respectfully shows:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

In the reorganization of the George F. Nord Building Corporation under Section 77B of the Bankruptcy Act, as then amended, the District Court subsequent to the entry of the decree of confirmation entered an order restraining all persons from sending any general written communication to the creditors of the Debtor or to the shareholders of the 79th and Escanaba Corporation, a corporation newly organized to take over the Debtor's assets, without first having such communication approved by the Court (Rec. 37). A communication was sent out to the shareholders of the 79th and Escanaba Corporation by appellant and others without first so submitting it to the Court and on the petition of the 79th and Escanaba Corporation for a rule on appellant to show cause why he should not be punished for contempt and after a hearing on the petition the court ordered appellant "re-manded to the United States Marshal for confinement in a jail for 30 days".

The restraining order alleged to have been violated and which was entered on June 11, 1940, contained the following provision:

"It is further ordered that all persons be and they hereby are restrained and enjoined from sending any general written communication to the creditors of the Debtor or the shareholders of the 79th and Escanaba Corporation without first having such communications approved by this court."

A decree of confirmation had been entered in the proceedings on January 23, 1939 and all of the assets of the Debtor's property had been conveyed on June 1, 1939

(Rec. 42 (3)) so that the restraining order in question was not entered until a period long subsequent to the entry of the decree of confirmation and the divestiture of the debtor's property from the jurisdiction of the bankruptcy court. There was no specific reservation of power in the decree of confirmation to enter the restraining order in question but only the general reservation of power to enter such orders as may be deemed necessary or advisable in connection with the carrying out of the terms and provisions of said amended plan of reorganization (Rec. 2 through 12).

The contempt order appealed from was not entered until June 27, 1941 (Rec. 59).

The contempt proceedings were instituted by the petition of the 79th and Escanaba Corporation (Rec. 59) for a rule on respondent B. A. Kausal, and others, to show cause why they should not be punished for contempt for sending out a communication to its stockholders and the original bondholders without first submitting the communication for approval to the Court. It will be noted that the 79th and Escanaba Corporation was a successor to the Debtor corporation in the reorganization proceedings and was not itself an original party to said proceedings. Evidence was taken on the "show cause" petition and the answer thereto and the District Court found the respondent guilty of contempt and sentenced him to thirty days' confinement in jail. On appeal to the United States Circuit Court of Appeals for the Seventh Circuit the order of the District Court was affirmed (Rec. 77). The main issues in the Appellate Court were that the court lacked jurisdiction to enter the restraining order in that: (a) the decree of confirmation terminated the Court's jurisdiction over the matters in controversy except as to the powers specifically reserved in said decree, and (b)

the court had no jurisdiction over property or the administration thereof which was no longer the Debtor's, and that the restraining order itself was a nullity in that it restricted the right of the freedom of speech and writing.

II.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the Circuit Court of Appeals is in conflict with decisions in other jurisdictions as to the effect of the decree of confirmation in a corporate reorganization proceeding. The decision of the Circuit Court of Appeals is tantamount to holding that the decree of confirmation does not end the court's jurisdiction to consider matters *de hors* the plan of reorganization and this holding is in conflict with the holdings in other jurisdictions on said question.

In Re Camden Rail & Harbor Terminal Corporation, 35 Fed. Supp. 862-867 (DCNJ).

2. The effect of a decree of confirmation in a corporate reorganization proceeding needs clarification. If such decree has all the attributes of finality that a decree in equity possesses then it is more than just one step in a proceeding and in such case the judgment of the Circuit Court of Appeals is erroneous.

3. The decision of said Circuit Court of Appeals is in conflict with two decisions in the Second Circuit which hold that upon conveyance of the Debtor's property where such property was no longer *in custodia legis* the bankruptcy court's power to enjoin was terminated.

In re Prudence-Bonds Corp., 77 Fed. (2d) 328, 330 (CCA2); Cert. denied 296 U. S. 584

In re Adolph Goebel, Inc., 80 Fed. (2d) 849, 852 (CCA 2).

4. The restraining order entered violates the provisions of the Federal and Illinois State Constitutions guaranteeing to every citizen the right of free speech and writing.

Art. II Sec. 4 of the Illinois Constitution, Smith-Hurd Ill. Anno. Statutes, Vol. on Constitution, page 286

Article V of the U. S. Constitution

16 Corpus Juris Secundum, 628

83 A. L. R. 193.

Wherefore your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket, No. 7883, *In the Matter of George F. Nord Building Corporation, Debtor, B. A. Kausal, Appellant v. 79th and Escanaba Corporation, a corp., Appellee*, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by the court, and for such further relief as to this Court may seem proper.

Dated September 2, 1942.

CHARLES BUSHNELL FULLERTON,
Counsel for Petitioner.

HAROLD V. SNYDER,
Of Counsel.